

ARTWORK LOAN AND DISPLAY AGREEMENT

This agreement for the loan and display of artwork ("Agreement") is made and entered into this 20th day of April, 2021 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Hector Ortega, an individual ("Artist"). City and Artist are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, in support of the City's Art in Public Places program, City's Cultural Arts Commission ("Commission") has considered the submission of various artworks for the purpose of display within the City; and

WHEREAS, the Commission has selected an artwork created by Artist, titled "Blind Faith" (the "Artwork"), as depicted in Exhibit "A" attached hereto; and

WHEREAS, the Commission has recommended to the City Council of City that the Artwork be displayed within City's median on East Redlands Boulevard, between Parkford Drive and Oak Street at a precise site to be determined by City and provided in written notification to Artist (the "Site"); and

WHEREAS, it is the desire of City and Artist to set forth their respective obligations, and the terms and conditions, for City's display of the Artwork;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, it is mutually agreed by the Parties as follows:

AGREEMENT

Section 1. Display Period/Term.

1.1 Artist hereby permits City to display the Artwork for a period of twenty four (24) consecutive months commencing on May 14, 2021, and ending on May 31, 2023 (the "Term"), unless earlier terminated as provided for herein.

Section 2. Compensation.

2.1. In consideration of Artist's loan and permission for City to display the Artwork, City shall pay Artist the sum of two thousand dollars (\$2,000) (the "Payment"). The Payment shall be payable in two installments. The first installment of one thousand six hundred dollars (\$1,600) shall be payable upon City's installation of the Artwork. The second installment of four hundred dollars (\$400) shall be payable upon City's removal of the Artwork.

2.2. City's obligation to make the full Payment to Artist is expressly conditioned upon Artist's timely removal of the Artwork from the Site, to the satisfaction of City. Notwithstanding the foregoing, Artist shall not be entitled to any portion of the Payment in the event this Agreement is terminated, for any reason, prior to City's installation of the Artwork.

Section 3. Installation of the Artwork.

3.1. Artist shall have the sole obligation and liability to transport the Artwork to the Site, and identified in written correspondence from City to Artist within ninety (90) days of the Effective Date of this Agreement.

3.2. City shall have the sole obligation and liability for installation and removal of Artwork at City's sole expense.

3.3. Artist shall have the sole obligation and liability for transporting of the Artwork from the Site. If Artist fails to transport the Artwork from the Site at the time of City's removal, then City may remove and dispose of the Artwork as City deems necessary or appropriate, in City's sole discretion, and City may withhold any remaining balance of the Payment. Expenses incurred by City for the disposal of the Artwork in excess of any balance of the Payment then held by City shall be the obligation and liability of Artist who shall reimburse City for the same.

Section 4. Sale of the Artwork.

4.1 Artist may sell the Artwork during the Term of this Agreement and, if sold, may assign Artist's rights under this Agreement. However, under no circumstance shall sale of the Artwork terminate this Agreement or adversely affect City's rights hereunder including, but not limited to, City's right of display. Artist shall immediately provide written notification to City upon the sale of the Artwork, and the name and contact information of the purchaser of the Artwork. Regardless of any sale, the Artwork shall remain at the Site for no less than six (6) months from the date of installation. Removal of the Artwork is the sole financial responsibility of Artist. City shall be notified at least two (2) weeks prior to removal in order to facilitate work orders for traffic control of the Site. If the Artwork is proposed to be sold during the Term of this Agreement, Artist shall first obtain a city of Redlands business license.

Section 5. Liability for Damage.

5.1 City shall insure the Artwork against damage or loss in the amount of twenty two thousand dollars (\$22,000), which the Parties agree is the fair market value of the Artwork and the full extent of City's liability in the event of its damage or loss.

5.2 City's obligation to provide insurance is solely for the duration of the Term of this Agreement, and only while the Artwork is located on City property. Artist is responsible and liable for any damage or destruction of the Artwork that may occur during installation of the Artwork, and during its display.

Section 6. Ownership and Moral Rights.

6.1 Unless sold pursuant to Section 4 hereof, Artwork shall remain the property of Artist during the Term of this Agreement.

6.2 During the Term of this Agreement, City shall not make any alterations to the

Artwork. For purposes of this Agreement, the term "alteration" shall mean repair, restore, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.

6.3 Artist waives any and all claims, with respect to the Artwork against City, and its elected and appointed officials, officers, employees, and assigns (current and future), arising under the Federal Visual Artist Rights Act, the California Art Preservation Act, and any other local, State, Federal or international laws that convey rights of the same nature as those conveyed under the Civil Code, or any other type of moral right protecting the integrity of works of art. City has no obligation to pursue claims against third parties to remedy or prevent alteration of the Artwork. However, City may pursue claims against third parties for damages, or to restore the Artwork if it has been altered without Artist's authorization.

6.4 Artist hereby grants City the right to photograph, film, videotape, or otherwise depict the Artwork at any time during the Term of this Agreement, and to use such photographs, film, videotapes, or depictions at any time thereafter for purposes of promotion relating to the exhibition of the Artwork or City. Such reproduction and images of the Artwork which feature the Artwork as art for publicity, promotion, and educational purposes shall, to the extent reasonably possible and appropriate, give reference to Artist. Reproduction and images of Artwork in which the purpose of the reproduction or image is predominantly unrelated to the Artwork shall not require reference to Artist.

6.5 Artist assigns to City all rights under the Copyright Act of 1976 for the Artwork produced under this Agreement. Notwithstanding the foregoing, City and its assigns are not responsible for defending the Artwork against any third party infringement of copyright and for protecting the attribution rights of Artist. Any registration of a copyright under the State's Register of Copyrights shall be the sole responsibility of City, and the costs of such registration shall be borne by City.

6.6 Ownership of, and title to, the Artwork shall remain with Artist, subject to Section 5.1 hereof. Artist hereby retains the right to collect the royalty payment provided by Civil Code Section 986. Artist agrees that City is not obligated to make any royalty payments to Artist pursuant to Civil Code Section 986.

Section 7. Artist's Representations and Warranties.

7.1 Artist represents and warrants that:

A. Artist is presently the sole owner of the Artwork and any copyrights therein, and has the full power to enter into and execute this Agreement to City

B. The Artwork is unique and original and solely the result of the artistic effort of Artist, does not infringe upon any copyright or rights of any person, and is free and clear of any liens or disputes related to property, intellectual or any other rights;

C. The Artwork is free from defective, or inferior materials and workmanship or inherent deficiencies or qualities that cause or accelerate deterioration; and

D. No person has been employed or retained to solicit or secure this Agreement for commission, percentage, brokerage or contingent fee and that no member of City has any interest, financially or otherwise in Artist's business.

Section 8. Notices. Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; or (iii) on the actual delivery date if deposited with an overnight courier, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section.

CITY

City Clerk
City of Redlands
35 Cajon Street
P.O. Box 3005 (mailing)
Redlands, CA 92373
jdonaldson@cityofredlands.org
Phone: (909) 798-7531

ARTIST

Hector Ortega
5634 N 14th Drive
Phoenix, AZ 85013
ortegasculpture@yahoo.com
Phone: (602) 421-2937

Section 9 Insurance and Indemnification. Artist shall defend, indemnify, and hold harmless City, and its elected and appointed officials, officers, employees and agents from and against all liabilities, obligations, losses, damages, judgments, costs and expenses, including attorneys' fees, court costs and other litigation costs, arising from or in connection with, any personal injury or property damage caused, directly or indirectly, by any act or omission of the Artist or Artist's employees or agents, or any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by Artist or Artist's employees, agents, contractors, or subcontractors, in connection with the Artwork.

Section 10. Non-Discrimination. Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, national origin, or disability in connection with, or related to, the performance of this Agreement.

Section 11. Assignability and Modification. Artist shall not assign or transfer any interest in this Agreement nor the performance of any of Artist's obligations hereunder, and any assignment or transfer attempt by Artist to assign or transfer this Agreement or any rights, duties, or obligations arising hereunder, without the prior written consent of City shall be void and of no effect.

Section 12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 13. Entire Agreement. This Agreement embodies the entire agreement and

understanding between the Parties with respect to the Artwork. There are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by the Parties. Any waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein, or a waiver of any subsequent breach or violation of the same or any other term of condition. The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

IN WITNESS WHEREOF, duly authorized representatives of City and Artist have signed in confirmation of this Agreement.

CITY OF REDLANDS

By:



Paul T. Barich, Mayor

ARTIST

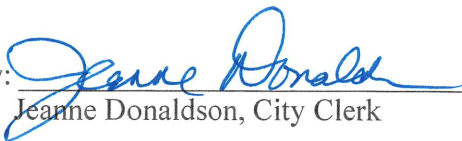
By:



Hector Ortega

ATTEST:

By:



Jeanne Donaldson, City Clerk

State of Arizona
County of Maricopa
Subscribed and sworn (or affirmed) before me
this 25 day of March, 20 21.

Notary Public

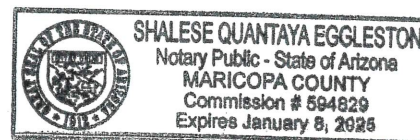


EXHIBIT "A"

**Artwork by Hector Ortega
"Blind Faith"**



EXHIBIT "B"

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

CHECK ONE

____ I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

X I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

ARTIST

By: 
Hector Ortega

Date: 3/25/2021